REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO. 1005/2023

(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO THE JUDGES: YES/~~NO~~
(3) REVISED.
DATE: 04-08-2025
SIGNATURE:

TSUMBEDZO KEVIN RALINEBA	**FIRST APPLICANT**
NEW HEIGHTS HOLDINGS (PTY) LTD	**SECOND APPLICANT**
MZIWANDILE NOMBULA	**THIRD APPLICANT**
THAKHANI NEGOTA	**FOURTH APPLICANT**
THENDO EMMANUEL MATODZI	**FIFTH APPLICANT**

AND

KHATHUTSHELO MICHAEL DZIVHANI	**FIRST RESPONDENT**
MIMED (PTY) LTD	**SECOND RESPONDENT**

Heard : 21ST OF MAY 2025

Delivered : 04 AUGUST 2025 by circulation to the parties' legal representatives

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JUDGMENT

MASHAMBA AJ:

INTRODUCTION

[1] The application for declaratory orders was made before the above honourable court, on the 06th June 2023. The Applicants applied for orders in the following terms;

1.1 that the conduct of the First Respondent pertaining to the administration of the Second Respondent's affairs declared unlawful;

1.2 that the First, Second, Fourth and Fifth Applicants' shareholder certificate in respect of the Second Respondent's shares is declared valid;

1.3 that the Third Applicant is declared a shareholder of 4.4% shares of the Second Respondent;

1.4 that the First Respondent should issue and/or cause to be issued, a share certificate in favour of the Third Applicant, confirming his shareholding in respect of the Second Respondent's shares;

1.5 that the First Respondent be liable for the costs of this application on an attorney and own client scale.

[2] The Respondents served and filed their notice of intention oppose, on the 13th February 2023. The matter was on the roll on the 25th July 2023 before honourable Acting Judge Makoti but it did not proceed as the Respondents were not ready as they did not serve their answering affidavit as required. The matter was postponed *sine die*, the Respondents were ordered to file their answering affidavit within 10 (ten)

days from the date of the order and the Respondents were ordered to pay costs on attorney and client scale.

[3] The Respondents served their answering affidavit on the 14th August 2023. The Applicants served and filled their replying affidavit dated the 05th September 2023.The Applicants made their application for hearing of this application and the matter was rolled for hearing on the 5th February 2025 before honourable judge Kganyago. On the said date the matter did not proceed because certain bundle was not found in the court's file. The matter was removed from the motion roll with no order as to costs.

[4] The Applicants directed a letter to the office of the Judge President to request a preferential date. The preferential date was granted and the matter was allocated for hearing on the 21st May 2025. On the said date of the hearing the Respondents made a formal application for postponement of this matter. The reason of the request for postponement was that the Respondents' counsel was not available to argue the matter and further that a correspondence letter was sent to the Applicants a month ago before the date of hearing. The Applicants opposed the Respondents' application for postponement. The Applicants argued that the Respondents was aware a month ago that the matter is allocated for preferential date but failed to arrange a counsel to represent them. The Applicants indicated that the reason for the postponement should be rejected by the Court because is not justifiable and will unnecessarily delay the finalisation of the matter.

[5] Subsequent to the submissions from both parties, the Court finds no cogent reasons to grant the postponement as requested. The Respondents application for postponement was dismissed.

[6] The matter was heard on the 21st May 2025 and both parties made their submissions, subsequent thereof, the judgment was reserved.

THE APPLICANTS

[7] The First Applicant is Tsumbedzo Kevin Ralineba, an adult male person, with identity number 8[…], residing at 2[…] P[…] Street, Model Park; The Second Applicant is New Heights Holdings (Pty) Ltd, a company duly registered and incorporated in terms of Company laws of the Republic of South Africa with registered office address at number: 7[…] F[…] Street, Daspoort, 0082; The Third Applicant is Mziwandile Nombula, an adult male person with identity number 8[…], residing at 1[…] H[…] Street, Arcadia, Pretoria, Gauteng Province; The Fourth Applicant is Thakhani Negota, an adult male person with identity number 8[…], residing at 5[…] K[…] Street, Johannesburg, Gauteng Province; and The Fifth Applicant is Thendo Emmanuel Matodzi, an adult male person with identity number 8[…], residing at 9[…] K[…] Street, Proclamation Hill, Pretoria, Gauteng Province ("the Applicants").

THE RESPONDENTS

[8] The First Respondent is Khathutshelo Michael Dzivhani, an adult male person, with identity number 8[…], residing at M[…] House 1[…], Burgersfort, Limpopo Province. The Second Respondent is MIMED (Pty) Ltd, Registration number 2014/131627/07, a company duly registered and incorporated in terms of the Company laws of the Republic of South Africa with registered office at Stand number 20121, Jane Furse, Limpopo Province ("The Respondents").

FACTUAL BACKGROUND

[9] The First Respondent who is a medical doctor, registered the Second Respondent (("the Company") on the 9th July 2014.The First Respondent was the sole holder of 100% shares of the Company.

[10] The whole scope of the Company was to render medical services to various clients.

[11] The Company bought a stand at JaneFurse, Limpopo Province and commenced with a building project. The Company had no enough funds to complete

the said building project, therefore, the First Respondent invited interested investors to purchase some shares from the Second Respondent.

[12] The First Respondent, First Applicant and a male adult man with the name of Maanda Nwendamutswu ("Maanda) held a meeting on the 10th of December 2014 at Jane Furse, Limpopo Province. The First Respondent entered into a verbal sale agreement with the First Applicant, where he offered 14.28% shares of the Company in the amount of R 100 000.00, payable on or before the 31 March 2015. The First Respondent further entered in a verbal sale agreement with Maanda, where he offered 42.86% shares of the Company in the amount of R 350 000.00, payable on or before the 31 March 2015.

[13] The First Respondent did not dispute the meeting held on the 10th December 20214, and in his answering affidavit he confirm that he made an offer to sell his shares to the First Applicant and Maanda as stipulated above. The First Respondent mentioned that the First Applicant failed to comply with his obligation to pay the amount of R 100 000.00 as required in terms of the offer, therefore, the offer lapsed. The First Respondent indicated in his answering affidavit that in all material times he has been a 100% shareholder of the Company.

[14] The First Applicant affirmed in paragraph 23 of his founding affidavit that he paid the amount of R 100 000.00 to the Company's FNB business account and he attached statements which reflect the dates the payments effected. The First Respondent confirmed certain amount but indicated that such payment was for investment but not for purchasing the Company's share. The Respondent further indicated that the First Applicant only contributed R 61 400.00 and did not pay the purchased price in terms of the abovementioned verbal sale agreement. The First Respondent averred that the First Applicant made the first payment on the 29th April 2015, and that it is precise that the offer had already lapsed.

[15] The First Applicant affirmed that the payment was made before the First Respondent terminated the contract, therefore, the verbal agreement remained valid. The First Applicant averred that he bought 14.28 % shares of the Company. The First Applicant also alleged that he was a director and also participated in an

administration affair of the Second Respondent without any remuneration as he was a shareholder. The First Respondent denied that the First Applicant was a director and that he participated in administrative affair of the Company.

[16] The First Applicant referred to the meeting that was held between himself and Maanda on the 09th May 2016 and stated that during this period the Company had no funds. He indicated that the minutes of the meeting was circulated among all shareholders including the First Respondent[1].

[17] On the 04th November 2016 the Respondents entered into a written agreement with the Second Applicant where the Respondents offered 13,1/2% (thirteen and half percent) shares in the amount of R 250 000.00 and additional amount of R 70 000.00 for 3% shares. The total shares purchased by the Second Applicant was 16.19 % shares of the Second Respondent[2]. The Second Applicant paid the respective purchase amount into the Company's FNB business account as stipulated in the contract of sale.

[18] The First Respondent in paragraph 105 of his answering affidavit denied selling any shares to the Second Applicant and claimed that there were no shares available for subscription considering the version asserted by the First Applicant who said he was owning 14.28%, First Respondent 42.86% and for Maanda 42.86% shares of the Company. The Respondent alleged that the agreement to sell shares to the Second Applicant was invalid ab initio as the Company had no available share for subscription.

[19] In reply, the First Applicant indicated that the time the Second Applicant purchased the shares of the Company, the shares were returned from Maanda to the Company as the First Respondent bought them from Maanda, who sold his share as he was experiencing financial challenges. The First Applicant further indicated that the First Respondent purchased the shares back to the Company and that he used the Company's funds. The Court was referred to the proof of payments annexures

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[1] Index bundle vol 1, page 59-61
[2] Index bundle vol 1, page 66

AA1- AA10 to the Respondents' answering affidavits at paragraph 9.5.7, which indicates that the funds were deposited from the Company's business account to Maanda. The First Applicant indicated that it is not correct that the Company had no available shares for subscription when the Second Respondent purchased his shares from the Company.

[20] It was alleged that the Third Applicant was a tenant leasing the Company's medical suite at Janefurse in 2017. He was later appointed as a facility manager of the same building. The terms of his appointment were that if he performs his duties satisfactory, he would be remunerated in a form of sweat capital and would consequently acquire certain shares percentage. In May 2018 the Third Applicant performed satisfactorily where he accumulated 95% scoring. The First Applicant indicated that it was decided among the shareholders that he must be awarded 4.47 % shares of the Second Respondent. No resolution or any form of communication to proof this allegation.

[21] The First Respondent in paragraph 112 of his answering affidavit, vehemently denied the First Applicant's assertion and indicated that he does not have any knowledge of what is alluded by the Applicants.

[22] The First Respondent also recruited a lady known as Jane. The First Applicant alleged that Jane purchased 6.5% shares of the Company in the amount of R 125 000. He further alleged that Jane was not interested as a shareholder, therefore, She sold them to the Fourth and Fifth Applicant in the amount of R 125 000.00. The Fourth Applicant deposited the amount of R 86 000.00 on the 10th September 2018 and the Fifth Respondent deposited R 39 000.00 direct to Jane account. No confirmation from Jane as the First Applicant indicated that they could not trace Jane whereabouts. The email was sent to Jane from the First Respondent, which confirmed that Jane held 6.5%[3] and that she was at liberty to sell her shares to any interested investor.

[3] Index bundle vol 1, page 65

[23] The First Respondents denied the allegation that Jane had shares from the Company and denied the assertion made about Jane. The First Applicant attached emails in his replying affidavit, which were not disputed as a proof that First Respondent was aware of Jane's shares, and that she sold them to the Fourth and Fifth Respondent.

[24] On the 21 December 2018, there was a meeting held by all shareholders which include the First Respondent, First, Second, Fourth and Fifth Applicants. In the said meeting the shareholders proportionate shares were confirmed and the Company's resolution was prepared. All shareholders attested their signature in the Company's resolution[4]. The aforesaid Company's resolution outline the shareholders shares as follows;

(a) Dr Khatutshelo Michael Dzivhani holds 37,94% of ordinary shares;
(b) Tsumbedzo Kevin Ralineba holds 16.24% of ordinary shares;
(c) New Heights Holdings holds 16.19% of ordinary shares;
(d) Thakhani Negata holds 2.39% of ordinary shares; and
(e) Thendo Emmanuel Matodzi holds 2.39% of ordinary shares.

[25] The First Respondent emphasised that the Company resolution was invalid since the Applicants are not shareholders of the Company, and resisted that he is the sole shareholder of the Company.

[26] The First, Second, Fourth and Fifth Applicants' share certificates were annexed in the founding affidavit, which indicate that the shares were transferred to the respective shareholders of the Company[5]. The Applicants confirmed that the First Respondent was involved in giving instructions to the Attorneys who processed the share certificates. On the 02nd March 2022, the First Applicant shared the shares certificates to all shareholders via email. The First Respondent disputed the shareholding certificates via email by indicating that the certificate must state MIMED Medical Centre Jane Furse opposed to Mimed (Pty) Ltd[6]. The First Applicant in reply,

[4] Index bundle vol 2, page 137
[5] Index bundle vol 1, page 32,33,41,42 and 43
[6] Index bundle vol 1, page 27, para 77, annexure FA40 @ page 146

attached the 21 December 2018, indicating that it is precise that the shares were purchased from the Second Respondent.

SUBMISSION

The Applicants

[27] The Applicants' counsel submitted that the First Respondent is dishonest when disputing the knowledge of the share certificates because it was done in terms of the Company's resolution dated the 21st December 2018 and further that when the attorneys who prepared the share certificates were instructed, he was involved together with the company's directors. The Applicants submitted that the First Respondent assertion that the share certificates are invalid because the name of the Company as MIMED (Pty) Ltd is incorrect and that the correct name should have been MIMED Medical Centre is an attempt to possess their shareholding from the Company. The Applicants further submitted that on the 21st December 2018 when the Company resolution was prepared, Ralineba Aluwani and Mudimeli Peter were the directors of the Company and they were also involved during the transfer of the Company shares to the Applicants[7].

[28] The Applicants counsel further submitted that the meeting held on the 31st December 2018 is a proof that the Applicants are the shareholders of the Company.

[29] The Applicants' counsel argued that the Third Applicant should be declared a 4.47 % shareholder of the Second Respondent because he was hired as a facility manager of the Company's building without any remuneration for the whole year in 2017, therefore, shareholders agreed that he should be given a share of 4.47% shares of the Company, which in monetary value worth R 89 473.68, considering his performance indicator where he accumulated 95%.

The Respondents

[7] Index Bundle 4, page 349 COR 39

[30] The Respondents' counsel submitted that the Applicants did not meet the requirements for declaratory order and therefore their application should be dismissed.

[31] The Respondents' counsel argued that the Respondents dispute the alleged verbal agreement which was entered between themselves and the First Applicant. The Respondents further mentioned that the offer of the sale of shares was made to the First Applicant which lapsed on the 31 March 2015. The First Applicant failed to pay the amount of R 100 000.00 in terms of the agreement. The amount of R 61400.00 which was paid by the First Applicant into the Company's FNB business account after the 31 March 2015 was an investment not a purchase price for the Company's shares. The Respondents failed to mention what type of investment they are referring to and how was the interest calculated. Nothing of substance was genuinely mention to persuade this Court that the payment was not a purchase price for the Company's shares. The First Applicant pointed to the transaction of over R 100 000.00 which was deposited by him and his family for the purposes of purchasing the Company's shares.

[32] The Respondents' counsel submitted that the signed written agreement dated 04th November 2016 between the Second Applicant and the Respondents was not sale contract of the Company shares but an investment contract. The Respondents indicated that the claim against him pertaining to the amount deposited to the Company prescribed since 3 (three) years has lapsed from the date of the investment and the claim cannot be resuscitated by a motion proceeding. I disagree with this contention because Section 12 of Prescription Act[8], state that a prescription commences to run as soon as the debt become due. The Respondents did not inform the Court the terms and conditions of the alleged investment, therefore, the matter did not prescribe. Moreover, the Prescription Act does not apply to the dispute regarding the Company's shares.

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[8] Presciption Act 68 of 1969, Section 12

[33] The Respondents further denied any knowledge of the Fourth and Fifth Respondents as the shareholders who purchased their shares in the amount of R 125 000.00 from a lady known as Jane.

[34] The Respondents' counsel submitted that the Third Respondent was never an employee of the Company and the Respondents have no knowledge of the agreement that the Third Applicant will be awarded 4.47% shares of the Company based on his performance. No Company resolution which was prepared in line with the Applicants' assertion; therefore, the Court should reject this allegation.

[35] The Respondents' counsel further argued that there were no authorised shares issued in terms of Section 36 of the Companies Act[9] and that if there were any new issued shares the parties would have done so, in compliant with the Companies Act. Section 38 of the Companies Act further state that if the company issued unauthorised shares in terms of Section 36, such issuance may be retrospectively authorised within 60 (sixty) days from the date the shares were issued. If the shares were not retrospectively authorised, the share issued will be nullified and the company should pay the fair value of the nullified share.

[36] The Respondents' counsel referred the Court to the decision of ***Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd***, 1984 (3) SA 623 (A) at 634E-635, and argued that in a motion proceeding where the applicant sought a final interdict without a resort to oral evidence, it is a general rule that it will not be granted if there are dispute of facts unless the applicant's affidavit justify for such an order.

[37] The Respondents submitted that the First Respondent is the sole shareholder of the Company and that this application must be dismissed with costs.

THE LAW

[38] Section 35(1) of the Companies Act 71 of 2008 (the Companies Act) determines that a share issued by a company is movable property, transferable in

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[9] The Companies Act 28 of2008 as amended, Section 36 and 38

any manner provided for or recognised by the Act or other legislation. The transfer of shares is governed by section 51 of the Companies Act.

[39] Section 36 (1)-(2) of the Companies Act, states that the company's memorandum of incorporation (MOI) must indicate the classes and numbers of shares that the company is authorised to issue. The authorisation of the shares can only be altered by amending the MOI through special resolution of the shareholders. Section 38 (2) states that if a company issued shares that have not been authorised in terms of Section 36 or in excess of the number of authorised shares of any number or class, the issuance may be retrospectively authorised in accordance with section 36 within 60 (sixty) days from date of issue.

[40] Section 163 (1)(a) (2) of the Companies Act, further states that a shareholder or a director of a company may apply to a court for relief if any act or omission of the company or a related person has had a result that is oppressive or unfairly prejudicial to the applicant. After the hearing of any application referred in terms of section 163, the court may make any interim or final order it considers fit.

[41] In ***Botha v Fick***[10] the Appellate Division confirmed that the cession of a right exists independently of the document embodying the agreement. A document embodying a cession is mere evidence of the agreement. The duty of a registered shareholder selling his shares to deliver a share certificate and completed transfer form to the purchaser of the shares is not a requirement for the validity of the cession whereby the right and title to the shares are transferred but a duty arising from the obligatory agreement. Thus, there are no formalities for the cession of a share.

[42] In ***Levy and Others v Zaltrust Investment (Pty) Ltd***[11] the Court said:

> 'I am hence of the opinion that the unanimous consent of the shareholders of a company <u>to a specific transaction</u> has the same effect and validity as the approval of such transaction by a general meeting of the company.' (Own emphasis)

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[10] 1995 (2) SA 750 (A).
[11] 1986 (4) SA 479 (WLD) at 485F

[43] In the case of ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another***[12]

> *"An applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's a/legations are, in the opinion of the court, not such as to raise a real, genuine or dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers".*

[44] In the case of **Moosa v Lalloo and Another 1957 (4) SA 207 (N)** and **Moosa v Lalloo 1956 (2) 237 (D & CLD)** the Court held that the procedural defects did not *invalidate the sale of shares. The Court held as follows in the former at 219A-C:*

> *'The answers to these aspects of the matter appear to me to stem from the fact that an allotment, by which shares are acquired from a company, is a contract. Although a share is created and comes into existence upon its original issue by the company, and not before issue (with the consequence that he who subscribes for it does not purchase it from the company}, the right to it springs from offer and acceptance. No ceremonious ritual, nor any magic formula, is required for the process of allotting the share. It may be effected by way of offer on the part of the company to the allottee, accepted by him, or, as is more usual, by way of offer (an application for shares) by him, accepted on behalf of the company; a contract of allotment may be effected in any manner in which a contract may be concluded, even by implication from conduct..'*

[45] The Court held further that:

> 'That he, Mohideen and Naicker met and decided upon the issue of shares to him and Mohideen cannot it seems to me, be denied; indeed, the share certificates were actually issued bearing the three signatures of the three of them, and this in the circumstances, is evidence of the contract to take and to

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[12] 2008 (3) SA 371 (SCA) at para 12

allot shares. Even though there may have been some absence of formality, it is clear to me that the plaintiff, on the one hand, and the Company, represented by Mohideen and Naicker, on the other hand, agreed upon the creation of 2,500 shares to be issued to the plaintiff, and this was put into effect. There certainly was a de facto allotment (cf. Ex Parte Liquidator Curlewis Citrus Growers' Co-operative Co. Ltd., 1933 T.P.D. 389), and the Company acted upon it, functioned with the aid of the plaintiff's capital and treated him as a shareholder and as a director.' (Own emphasis}

DISCUSSION

[46] This matter is not complicated but straight forward as the background facts have been succinctly outlined above. The First Respondent registered the company in 2014, during this period the First Respondent was the sole shareholder of the company's shares. The Company had no enough funds to sustain itself. The First Respondent made a decision to sell the Company's shares to different individuals including the First, and Second Applicants. The First Respondent was also involved when the shares were sold to the Fourth and the Fifth Respondent as appears from the communication via the email, which its authenticity of the emails were not disputed.

[47] The agreement of sale between the First Applicant and the Respondents was done verbally but confirmed via emails and it was further confirmed by the meeting held by all shareholders on the 21st December 2018. I am satisfied that the First Applicant hold 16.24 % shares of the Company and that he was involved in an administrative affair of the company without remuneration since he became a shareholder in the year 2015. The First Applicant contributed towards operational costs of the Company as appears in the Company's FNB business account statements.

[48] The Respondents and the Second Applicant entered into written sale agreement of the Company's shares which the terms and conditions are clearly stipulated. I am satisfied that the Second Applicant's share certificate is valid.

[49] The Company's shares were already issued and its shares would not be regarded as new issued shares which may require to be authorised by the amendment of the Company's MOI in terms of Section 36 of the Companies Act. It is my view that there was no need to amend the Company's MOI as contemplated in Section 36 of the Companies Act. The Respondents submission that the Applicants issuance of shares did not comply with Section 36 and 38 of the Companies Act is not correct. Even if it was so, but none compliance with certain formalities will not render the transferred shares invalid.

[50] The Respondents submitted that the Company did not issue new shares to the Applicants and further that even if the new shares were issued, it would not have in complied with Section 36 and 38 of the Companies Act because the MOI was not amended and authorisation was not retrospectively done. The Respondents further submitted that although the share certificates were issued, therefore, such share certificates were invalid ab initio. I find that the Respondents argument is incorrect because no new shares were issued by the Company which required the amendment of the Company's MOI in terms of Section 36 and 38 of the Act.

[51] The court was not referred to the company's MOI or article of association which outline the method which if not followed the transfer of the shares would be invalidated. In **Moosa case** referred above, in paragraph 43, it was found that procedural defects did not invalidate the sale of shares. In this case I did not find any defect which can invalidate the Applicants' share certificates. In this case I see the First Respondent trying to capture the Company to enrich himself as it started to be lucrative. I find that the Respondents did not raise a real, genuine or dispute of fact which can justify rejecting the Applicants' version. In my view the Respondents did not raise a *bona fide* defence in this matter.

[52] The Fourth and Fifth Applicants purchased their shares from Jane who owned 6% shares of the company, therefore, when she resigned, she decided to sell her shares and the First Respondent was involved in this transaction as the company had no money to purchase her shares. I am satisfied that the Fourth and Fifth Respondents' shares as appear in their respective share certificate is valid.

[53] The court did not find any proof of the shares belonging to the Third Respondent and no resolution was taken to confirm such an agreement between the parties, therefore, his claim cannot succeed through motion proceeding.

[54] The First Respondent was a master in this case as in the inception of the Company he was the only person who represented the Company as a shareholder and/or director; therefore, he could issue new share at any time and sell it without affecting anyone because he was the sole shareholder. In this instance, defending based on the procedure of issuing and amending the MOI is not genuine. The First Respondent knew very well the repercussion of his conduct and how it will affect the Company. The Respondents claim that shareholders are mere investor of the Company is a way of trying to enrich himself and undermining the rule of law.

[55] The First Respondent submitted that he is a 100% shareholder of the Company and that he did not cede his shares to the Company. This submission goes against his conduct because as one of the Company's shareholders, he participated in the transferring the shares to the Applicants. If he was not part of the transaction maybe it would yield different results but as it stands, it is precise that the shares were legally sold to the Applicants. The decision to sell the Company's shares was taken by the First Respondent, and as he submitted that Section 36 and 38 should have been complied with, this means that as he was the sole shareholder of the Company, he was solely responsible to comply with the Companies Act. I am satisfied that the transfer of the shares to the Applicants complied with Section 51 of the Companies Act.

[56] The First Respondent claims that his 100% share in the company was not sold as he did not receive any consideration for the sale but he was involved as a shareholder of the company during the preparation of the company's resolution which recognised the First, Second, Fourth and Fifth Applicants as a Shareholders of the company. The First Respondent did not dispute the resolution which outline the Applicants' shares, specifically, as appears in the Company's resolution dated the 31 December 2018.

[57] The First Respondent claims that the amount paid by the Applicants as a consideration for the shares was a mere investment in the Company but the First Respondent did not explain why the Applicants were referred as the shareholders of the Company in the aforesaid Company's resolution. No explanation of how the Applicants were benefiting from the alleged investment and how they would be compensated for the administrative work they have done to the Company. The participation of the shareholders in the decision making before the inception of the shareholding dispute is a clear-cut that both parties were succinctly shareholders of the Company.

[58] During the registration of the Company, the First Respondent was the sole shareholder and director of the Company. No leadership structure was established in terms of Companies Act and/or the King IV report as required. So, in these circumstances, the structures such as board of the Company and Special resolution of the Company as referred in Section 36 and 38 did not exist in the Second Respondent. The First Respondent alone was in control of the Company; he had a power as a sole shareholder and a director of the Company. The First Respondent had powers to issue new shares and to amend the Company MOI alone without any board of the Company or special resolution as there were no established governance structures of the Company. The Company governance structure was only changed after the Respondents have sold their shares to the Applicants. The Company had new directors and shareholders, only in this period the governance structure was developed. During this period the First Respondent was prohibited to take sole decision without the involvement of other shareholders.

[58] In my view, the First Respondent is not the sole shareholder of the company and proceeding running the company alone is unlawful and should be prohibited.

COSTS

[59] The general rule is that the cost should follow the successful party and the court has discretion to grant or refuse costs at the end of each matter. The Applicants argued for the costs on attorney and client scale. The court is of the view that granting the Applicants costs on attorney and own client 'is fair and reasonable

considering the complexity and period the matter was litigated. Although the Third Applicant failed to prove his claim, however, I am of the view that no cost order should be made against him.

ORDER

[60] In the circumstances, the court make the following Order;

1. that the conduct of the First Respondent pertaining to the administration of the Second Respondent's affairs is declared unlawful;
2. that the First, Second, Fourth and Fifth Applicants' shareholder certificate in respect of the Second Respondent's shares is declared valid; and
3. The Third Applicant's application is dismissed with no order as to costs.
4. The Respondents to pay costs on attorney and client scale.

E MASHAMBA
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

<u>APPEARANCES</u>

For the Applicant	:	Adv N Muleya
Instructing attorney	:	Setume Attorneys Inc
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For the Respondent	:	Mr Kabelo Mafa
Instructed by	:	Kabelo Mata Attorneys Inc
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Heard on	:	21^{st} May 2025
Judgment delivered on	:	04 AUGUST 2025